

## Acts (1998)

### Chapter 280

#### AN ACT RELATIVE TO HIRING WOMEN ON STATE CONSTRUCTION PROJECTS.

*Whereas* , The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith the hiring of women on state construction projects, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

**SECTION 1.** As used in this act, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Commissioner", the commissioner of the division of capital asset management and maintenance.

"Commonwealth" or "state", any state authority or state agency as defined by section 1 of chapter 40 of the General Laws, or a corporation established by the commonwealth that essentially provides a public function.

"Construction trades", shall include, but not be limited to, bricklayers, carpenters, cement masons, electricians, ironworkers, laborers, operating engineers, pipefitters, plumbers, sheetmetal workers.

"Disparity studies", the disparity studies conducted by the commonwealth's Phase I transportation entities in 1995, by the city of Boston, the Boston Housing Authority and the Boston water and sewer commission in 1994, by the Massachusetts Water Resources Authority in 1990, and by the Massachusetts commission against discrimination in 1990.

"Division", the division of capital asset management and maintenance.

"Secretaries", the secretary of the executive office of administration and finance and the secretary of the executive office of transportation and construction.

**SECTION 2.** The secretaries or their designees, shall develop and implement, to the extent possible under the constitutions and laws of the United States and the commonwealth and the disparity studies, a comprehensive plan to eliminate discrimination against and to increase the number of female construction workers at state construction projects. The plan shall identify its objectives and describe how its provisions are narrowly tailored to achieve its objectives.

The secretaries or their designees in developing such plan shall also establish goals for women's participation in state funded contracts which are based on the broadest and most inclusive pool of available women capable of performing and interested in working in the construction trades. Said goals shall be expressed as overall annual program goals, applicable to the total dollar amount of contracts an agency of the commonwealth may award during each fiscal year. To

the extent permissible under the constitutions and laws of the United States and the commonwealth and the disparity studies, said goals shall establish a minimum per cent of participation on state funded construction projects; provided however, that said minimum per cent of participation may be increased pursuant to section 3 of this act.

Said goals shall provide that in the employment of any female journeymen and apprentices in construction trades, the contractor or subcontractor shall give preference first to female citizens of the commonwealth who have served in the armed forces of the United States in time of war and have been honorably discharged therefrom or released from active duty therein, and who are qualified to perform the work to which the employment relates, and secondly, to female citizens of the commonwealth generally and who are qualified to perform the work to which the employment relates, and, if such cannot be obtained in sufficient numbers, then to female citizens of the United States and who are qualified to perform the work to which the employment relates.

Said plan and goals shall be established no later than 90 days after the effective date of this act and shall be reviewed and revised, as necessary, each fiscal year thereafter.

Said plan and goals, once established, shall be transmitted to the house and senate clerks who shall forward the same to the house and senate committees on ways and means and the joint committee on state administration.

**SECTION 3.** The secretaries, in compliance with the plan, shall develop the contract specifications, terms, conditions, and language and shall take the administrative steps necessary to carry out the

purpose of this act.

Prior to the commencement of any construction project, capital works, or state economic development plan covered by this act and in compliance with the plan established by the secretaries, the construction agencies under their jurisdiction shall review spending plans for such project and identify the number of job positions to be created by the project.

The secretaries shall also be responsible for the enforcement and monitoring of compliance with the provisions of this section which shall include, but not be limited to, the following:

(1) requiring all contractors and subcontractors to prepare staffing tables on a quarterly basis; which shall be broken down in projections, by week, of workers required in each trade. Said tables shall be furnished at least one week in advance of the commencement of the period covered, and also when updated, shall be furnished to the division, commission, and the liaison committee; provided, however that subcontractors with six or fewer employees shall only be required to submit the updated staffing titles required by this section. Said tables shall be available for inspection by any interested party filing a written request to the secretaries for such inspection;

(2) requiring all contractors and subcontractors affected by this section to submit weekly workforce charts listing workers by name, craft, job category, hours worked, and sex to the secretaries, division, commission, and liaison committee. Said charts shall be available for inspection by any interested party filing a written request to the secretaries for such inspection;

(3) registering all interested organizations and notify any such organizations of any pre-award conferences between the agency and developer or contractor relating to hiring requirements and goals as required by this section.

To the extent permissible under the constitutions and laws of the United States and the commonwealth and the disparity studies, the secretaries shall reserve the minimum per cent of jobs for women in the construction trades for those agencies within their jurisdiction, in compliance with the plan established by the secretaries, except, where permitted, that a greater percentage may be reserved to reflect the percentage of the female population within the standard metropolitan statistical or labor market area in which the capital facility is located; to reflect the numbers of females available to perform work on a project or to achieve the specific annual dollar value reserved for females in the construction trades; if any such construction project subject to this section is located within a political subdivision that requires a higher per cent of women in the construction trades for a project involving that political subdivision's funding, approval, oversight, management or to be a signatory to a contract, then that higher percentage shall be required on any construction project subject to the provisions of this section.

The secretaries or their designees, shall have the power by means of contract provisions, consistent with due process requirements to the extent applicable, to impose sanctions upon contractors and subcontractors found to be in non-compliance with this section as follows:

(1) suspension of payments;

- (2) termination of contract;
- (3) recovery by the commonwealth of the contract award price as liquidated damages; or
- (4) denial of the right to participate in future projects for a maximum of three years.

The secretaries shall by March 15 of each year submit to the Massachusetts commission against discrimination, to the clerks of the house and the senate who shall forward the same to the house and senate committees on ways and means and the joint committee on state administration, a report describing the number of contracts and subcontracts awarded by the agencies within their jurisdiction which shall contain such information as to the percentage of women in the construction trades employed on the contract within the preceding calendar year. The report shall, at a minimum, show the name and address of each such contractor or subcontractor, the contract, or subcontract price, a description of the work performed on such contract by class of work and project type, and shall show separately the total number of contracts awarded and the total number of women employed in the construction trades as a percentage of the total number of individuals employed in that trade.

**SECTION 4.** The secretaries shall conduct a study of the utilization of female workers in the construction trades on state construction projects. The secretaries shall file the results of the study with the house and senate committees on ways and means on or before March 15, 1999. The secretaries shall revise the plan established pursuant to section 2 if appropriate and warranted by said study.

Approved August 10, 1998.